



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

FEB 05 2015

ORDER OF THE STATE ENGINEER
For Permanent Change Application Number 51-1481 (a39817)

Permanent Change Application Number 51-1481 (a39817) in the name of Allred Properties, LLC, was filed on May 6, 2014, to change the point of diversion and places of use of 100.00 acre-feet of water as evidenced by Water Right Number 51-1481. Heretofore, the water has been diverted from a well located South 8 feet and West 50 feet from the E $\frac{1}{4}$ Corner of Section 26, T9S, R1E, SLB&M (14-inch well, 307 feet deep). The water has been used for the irrigation of 25.00 acres from April 1 to October 15. The water has been used in all or portion(s) of Sections 23, 25, & 26, T9S, R1E, SLB&M.

Hereafter, it is proposed to divert 100.00 acre-feet of water from a well located North 875 feet and West 610 feet from the S $\frac{1}{4}$ Corner of Section 15, T9S, R2E, SLB&M (existing 12-inch well, 304 feet deep). The nature of use of the water will remain the same as heretofore. The place of use of the water is being changed to all or portion(s) of Section 22, T9S, R2E, SLB&M.

Notice of the application was published in The Payson Chronicle on June 4 and 11, 2014, and protests were received from Cole Surveying & Engineering. A late protest was received by Salem Pond Company. A hearing was not held.

Cole Surveying & Engineering expresses concern that his ground water right will be impaired and approval of this change will allow for other similar change applications to occur. He believes the ground water in this area is over appropriated and no new water is available to divert under this change without adversely affecting other rights for both local surface and ground water diversions. He states that the Water Right Number 51-1481 has not fully been used at the heretofore place of use and the full amount should not be considered for this change application.

Salem Pond Company filed a protests expressing concern that their water right may be impaired if this application is approved. Water Right Number 51-4064, a diligence claim filed by the Salem Pond Company is for the use of water from springs contributing to Salem Pond. The claim asserts the right to use water since prior to 1851 for irrigation and stockwatering. Flow records have been recorded from 1973, 1979 and October 7, 2014. The flows for these dates respectively are 7.01 cfs, 5.77 cfs and 6.6 cfs. The protest filed asks that the spring flows be protected as if they are surface flows.

On November 15, 1995, the Utah/Goshen Valley ground-water management plan was implemented by the State Engineer. The intent of the plan is to provide specific management guidelines under the statutory provisions of Title 73 of the Utah Code. This plan studied the valley fill area within Utah/Goshen Valley, which is a tributary to Utah Lake and the Jordan

River and evaluated a study¹ completed by the United States Geologic Survey to address basin recharge, discharge and water use. The plan defined the basin as fully appropriated, defined annual withdrawal limits from ground water in southern Utah Valley, and determined projects proposing a new withdrawal of ground water would need to be accomplished by filing a change application on an existing water right. Some of the oldest surface rights in this basin are dependent on Utah Lake. The annual withdrawal from wells for southern Utah Valley was limited under this current plan to an average of 100,000 acre-feet per year, using a 5-year moving average. Maximum withdrawals in any one year shall not exceed 120,000 acre-feet. The United States Geological Survey report, Groundwater Conditions in Utah, Spring of 2013, indicates the total estimated withdrawal from wells in southern Utah Valley in 2012 was about 36,900 acre-feet. That amount is 8,800 acre-feet more than in 2011.

USGS Technical Publication No. 111, "Hydrology and Simulation of Ground-Water Flow in Southern Utah and Goshen Valleys, Utah", analyzed the groundwater conditions for southern Utah Valley. The report indicates groundwater in southern Utah Valley occurs in confined and unconfined conditions and both are considered to be part of the ground water system. Page 27 of the report lists a discharge from Salem Lake in 1990 as 4,200 acre-feet (4,200 acre-feet per year is approximately 5.8 cfs). A ground water model was also a result of the study. In reviewing the hereafter location of the existing well, the study information indicates localized draw down is not unusual or unexpected. The applicant is cautioned that other well rights near the proposed wells could experience some draw-down if all of the applicant's rights are fully developed and pumped. Utah Code Ann. §73-3-3(2)(b) states an approved change may not be made if it impairs a vested water right without just compensation.

Surface and groundwater in the Utah Lake basin are considered interconnected as groundwater and surface waters in the basin flow toward and contribute directly to Utah Lake. All surface and groundwater in the Utah Lake basin are considered to be fully appropriated. No additional water is available for appropriation. Any new development must be accomplished by change applications based on existing rights, which this application proposes to do. The State Engineer is of the opinion that change applications based on surface or groundwater rights within the Utah Lake basin can be considered for the development of new project; however, each application must be evaluated on its own merits and cannot propose a use that will impair existing rights without compensation. Likewise, rights junior to the water rights for Utah Lake cannot impair those existing rights. If conditions contained in this order are followed, development of this application can occur. The applicant and protestants to this application are cautioned that proper measurements need to be maintained on all existing rights to ensure any actual impairment to existing historical rights is documented. In accordance with Utah Code the applicants shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

¹ "Hydrology and simulation of ground-water flow in southern Utah and Goshen valleys, Utah" Technical Publication No. 111, United States Geological Survey in cooperation with the Utah Department of Natural Resources Division of Water Rights, 1995.

The States Engineer is of the opinion that every water right has associated with it a priority date. The priority of a change application may affect the ability of a water right holder to divert water based on the change application if water is not available at the new diversion location without impairing existing rights. For localized interference, diversions under this change application could have a priority as late as May 06, 2014. Utah Code Ann. §73-3-3(2)(b) states an approved change may not be made if it impairs a vested water right without just compensation. If interference occurs from pumping the proposed well, and the impaired party can demonstrate that the impact has occurred, the applicants may be required to replace the water impacted, limit pumping, or in some other way compensate the impaired party as determined by a court of competent jurisdiction.

Utah Code Ann. §73-3-3(2)(a), states that any person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. Additionally, §73-3-3(5)(a) directs the State Engineer to follow the same procedures for a permanent change application as provided by statute for applications to appropriate water. The State Engineer must approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8(1). This application appears feasible provided certain conditions are observed.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 51-1481 (a39817) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) This change application is limited to the annual diversion of 100.0 acre-feet of water to be used for irrigation of 25.0 acres from April 1 to October 31.
- 2) **As noted, this approval is granted subject to prior rights. The applicants shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.**
- 3) To accommodate the approval of this permanent change application, the use of 100.00 acre-feet of water to be used for irrigation of 25.00 acres from April 1 to October 15 at the historic point of diversion and place of use must cease.
- 4) Whereas this Change Application has been filed to entirely replace and supersede prior approved Change Application Number 51-1481 (a26484), with this approval that prior application is considered to have been **WITHDRAWN**.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **February 29, 2020**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

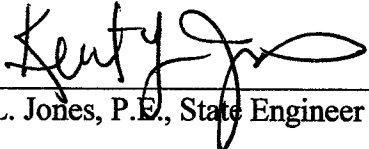
It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

ORDER OF THE STATE ENGINEER
Permanent Change Application Number
51-1481 (a39817)
Page 5

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 5th day of February, 2015.


Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 5th day of February, 2015 to:

Allred Properties, LLC
11497 Goosenest Drive
Payson, UT 84651

Cole Surveying & Engineering
c/o Donald C. Cole
PO Box 62
Salem, UT 84653

Salem Pond Company
c/o Kurt Christensen, President
23 South 500 West
Salem, UT 84653

BY: 
Sonia R. Nava, Applications/Records Secretary